IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2397 OF 1998

Dena Bank ...Plaintiffs

Versus

Chetana Cards Mfg. Co. ...Defendants

Shri Sunil Shukla i/by Shukla & Shukla & Co for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 13, 2007.

ORAL JUDGMENT:

1. The suit is listed under the caption of "Undefended Suits for Exparte Decree".

2. The first Defendant is a registered Partnership Firm and the second and third Defendants are the partners of the first Defendant. On the request of the second and third Defendants, the Plaintiffs granted in favour of the first Defendant a cash credit hypothecation facility in the limit of Rs.53,000/-, a bill purchase D.A facility to the extent of Rs.2,50,000/- and a term loan of Rs.55,000/-. The Defendants executed a demand promissory note in the sum of Rs.50,000/-, a letter of continuing security, an agreement of hypothecation of goods on 12th November, 1994 by way of security for repayment of the amount payable under the cash credit hypothecation facility.

On the same day the Defendants executed a demand promissory note in the sum of Rs.2,50,000/-, a letter of continuing security in respect of bills purchase facility. On the very day the Defendant executed a demand promissory note in the sum of Rs.55,000/-, a term loan agreement of hypothecation, an instrument of hypothecation of immovables, plants and machineries by way of security for repayment of the amount due and payable under the term loan facility. The second and third Defendants executed separate documents of guarantee on 12th November, 1994 in favour of the Plaintiffs.

3. It is alleged that ten bills were drawn on various parties for various amounts and though the said bills were accepted for payment, the same have been dishonoured. The particulars of the said bills have been incorporated in paragraph No.6 of the plaint.

4. The suit is filed for recovery of the outstanding amounts under the aforesaid facilities granted to the first Defendant. The particulars of the claim have been set out in Exhibits ‘R’,‘S’ and ‘T’ to the plaint. Prior to institution of the suit, the Advocate for the Plaintiffs by notice dated 08th November, 1997 had called upon the Defendants to pay the

outstanding amounts payable to the Plaintiffs. According to the Plaintiffs the said letter was replied to by the Defendants on 26th November, 1997 by which the Defendants accepted their liability and promised to pay the amount to the Plaintiffs.

5. The Plaintiffs have filed affidavit of claim of Mr.S.M.Kamble, Senior Manager of the Plaintiffs. The said affidavit is marked "X" for identification and is taken on record. The Plaintiffs have also tendered the original documents referred to in the plaint alongwith list. The said original documents alongwith the list are taken on record and marked "Y" (collectively) for identification.

6. The execution of the documents by the Defendants has been duly proved by the affidavit of Mr.S.M.Kamble. The extracts of the accounts of the Defendants maintained claimed by the Plaintiffs have been also produced and proved. The Plaintiffs have proved their claim in the suit by the said affidavit.

7. The Plaintiffs have prayed for further interest at the rate of 19.34% per annum with quarterly rests from the date of filing of the suit on the amounts payable by the Defendants under the said three

facilities. Considering the facts and circumstances of the case, interest will have to be granted at the rate of 18% per annum.

8. Hence, the suit is decreed in terms of prayer clauses (a) to (e) and (j) with modification that interest will be payable at the rate of 18% per annum from the date of filing of the suit till payment or realisation. The interim order passed by this Court in Notice of Motion No.2083 of 1998 will continue to operate for a period of six months from today to enable the Plaintiffs to take appropriate steps in execution of the decree.

9. The Plaintiffs will be entitled to refund of court fees, if any, as per the rules.

10. Certified copy is expedited.

JUDGE